THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No. 8929 of 2007

Dated: 27.11.2007

Between:

K.Nagaraju.

..Petitioner.

and

The Superintending Engineer, TL & SS Circle, A.P.Transco, Gajuwaka, Visakhapatnam District and others.

..Respondents.

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.8929 of 2007

ORDER:

This writ petition is filed for a writ of mandamus declaring the action of the first respondent in passing the impugned memo No.SE/TL & SS/VSP/Adm/O&M/UI/E/F.Dkt/ D.No.1099/2007 dated 03.04.2007 reverting the petitioner from the post of Junior Lineman to the original post of Watchman with immediate effect without issuing notice or assigning proper reasons, as arbitrary and illegal.

It appears, the petitioner was initially appointed as regular watchman on 31.01.2001. While so, he was subjected to regular selection process for the post of Junior Lineman and the selections were held on 22.08.2006. It seems, in the meanwhile, A.P.Transco, through its T.O.O. 45, dated 19.05.2006, in supercession of the earlier memo, dated 20.05.1997, clarified that possession of ITI qualification is essential for appointment by transfer from the post of Attender/Watchman to the post of Junior Lineman, a technical post. According to the respondents, in view of amendment of the Rule, possession of ITI qualification is essential for appointment by transfer from the post of Attender/Watchman to the post of Junior Lineman and therefore, the impugned order was passed restoring the position of the petitioner to that of watchman in view of the fact that he does not

possess ITI qualification.

The learned counsel for the petitioner strenuously contended that at the time of appointment of the petitioner as Junior Lineman on 28.02.2006, there was no such requisition of possessing ITI qualification as a must and the petitioner was selected as per the Rules in vogue before 19.05.2006 and he was in fact, appointed in pursuance of the selection held on 22.08.2006 and therefore, the said appointment cannot be cancelled on the ground of issuance of T.O.O.Ms.45, dated 19.05.2006 by the Chair Person and Managing Director of the A.P. Transco and the said order, dated 19.05.2006, has no retrospective operation. He further contended that the Rules, which were governing the field as on the date of selection, shall be taken into consideration but not the date on which the amendments were brought and the said amendment cannot be taken into consideration in this case. In this regard, learned counsel for the petitioner relied upon the judgment in **Y.V.RANGAIAH v.**

J. SREENIVASA RAO[1] and has drawn the attention of this Court at para 9, which reads as under:

> "Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondent Nos. 3 to 15 would not have been deprived of their rights of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the statewide basis and therefore, there was no question of challenging the new rules. But the question is of

> filing the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

In view of the above, it is clear that as on the date of filling up the vacancies, the Rules existing then should be taken into consideration and not the amended Rules thereafter, particularly when they have no retrospective operation. In this case, admittedly as on 22.08.2006, when selections were made and vacancies are sought to be filled up, the amended Rules dated 19.05.2006, that possession of qualification of ITI is an essential one for appointment by transfer, were not there in the department.

Under those circumstances, the impugned order passed by the first respondent is arbitrary and illegal, and therefore, the same is liable to be set aside.

Accordingly, the Writ Petition is allowed.

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C.V.RAMULU, J

Dated: 27.11.2007.

sj

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[1] AIR 1983 SUPREME COURT 852